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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,146	01/13/2005	Klaus-Dieter Hammer	2901886-000022	2776
84331 7590 05/22/2009 Baker Donelson Bearman, Caldwell & Berkowitz, PC 555 Eleventh Street, NW, Sixth Floor Washington, DC 20004				
EXAMINER KASHNIKOW, ERIK				
ART UNIT		PAPER NUMBER		
1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,146

Applicant(s)

HAMMER ET AL.

Examiner

ERIK KASHNIKOV

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/13/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 and 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krallmann et al. (CA 2,292,983) in view of Smith (EP 0 190 630).
3. Krallmann et al. teach multilayer polyamide-based tubular film conditioned in ready to fill form (page 1 first paragraph).
4. In regards to claim 1 Krallmann et al. teach that the inner and outer surface of their tubular film are comprised of polyamides (page 3 lines 20-22), and that the film includes an antimicrobial agent (page 3a line 13). Krallmann et al. further teach that the polyamide layers can absorb 6% weight of an aqueous solution (example 2).
5. In regards to claims 1 and 22 Krallmann et al. teach the use of triglyceride mixtures to act as a lubricant. While Krallmann et al. are silent with regards to the specific triglycerides being used one of ordinary skill in the art would recognize that non-synthetic triglycerides are natural oils, and as such the term triglyceride mixtures while not specific would necessarily be comprised of either a natural oil (non-synthetic form of triglyceride) or a synthetic form of triglyceride. While Krallmann et al. are silent with regards to the effect the triglycerides have on the viscosity, as it is the same material as

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preferred by Applicants it would necessarily have the same properties, i.e. being a viscosity increasing component.

6. While Krallmann et al. teach multilayer polyamide based tubes and antimicrobial agents, they are silent regarding the specific antimicrobial agents of Applicant's, how it is applied and its properties.

7. In regards to claims 1, 2, 14, 15 and 21 Smith teaches that a preferred antimicrobial agent for use in sausage casings are lower alkyl (C₁-C₇) esters of p-hydroxybenzoic acid (page 13 middle paragraph). Smith teaches that polyhydric alcohols such as glycerin (also know as glycerol) may be used in concentrations of up to 15% by weight of liquid (bottom of page 11 to top of page 12). While Smith is silent with regards to the effect the glycerin has on the viscosity, as it is the same material as preferred by Applicants it would necessarily have the same properties, i.e. being a viscosity increasing component.

8. In regards to claims 3-5 and 16 Smith teaches that propylene glycol can be added to the liquid used to pre-moisturize the foodstuff casing (last paragraph page 11 first paragraph page 12) While Smith is using this compound as a plasticizer the compound still retains its water reducing antimicrobial properties.

9. In regards to claims 6 and 7 Smith teaches that carboxy methyl cellulose, a derivative of cellulose may be added to the interior walls to act as a low temperature peeling aid (page 19 bottom paragraph).

10. In regards to claims 8 and 17-19 Smith teaches a process for production of foodstuff casings in which the casing is premoistened with a solution that contains an

effective amount of the antimicrobial agent. The effective amount is defined as 0.2-0.5% by weight of the liquid (page 9 first paragraph). Smith also teaches that in the preferred embodiment of the invention, that propylene glycol is present in amounts of 0-10% by weight of the liquid (page 9 first paragraph). This gives a range of 0.2-10.5% for the antimicrobial agents which completely covers Applicant's range.

11. In regards to claim 9 Smith teaches in his examples that the solutions are applied in one aqueous step (pages 20-23). This step involves soaking the casings in a bath, which would cause the coating to go on to both the inner and outer surface.

12. In regards to claims 13 and 20 Smith teaches that his invention relates to ready to fill pre-moistened food casings with an antimicrobial nature and specifically points out the fact that sausage casings may be made this way (page 10 bottom paragraph).

13. One of ordinary skill in the art at the time of the invention would be motivated to modify the casing of Krallmann with the casing of Smith et al. because the casing of Krallman which has the ability to retain elevated consistency in diameter during the filling process and reliable machinability of the casing (page 3 lines 15-17) would benefit from the casing of Smith which has the ability to be stored indefinitely without the formation of molds.

14. Claims 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krallmann (CA 2,292,983) in view of Smith (EP 0 190 630) in further view of Quinones (US 6,183,826).

15. As stated above Smith and Krallmann et al. teach a ready to fill foodstuff casing, which contains an antimicrobial agent as well as carboxy methyl cellulose added to the interior walls. However Smith and Krallmann et al. are silent regarding spraying the solution containing the antimicrobial agent onto the foodstuff casing.

16. In regards to claims 10 and 11 Quinones et al. teach that it is common in the art to coat the casings, especially the inner side of the casing, using a spray during the shirring process (column 7 line 54 – column 8 line 9).

17. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the method of producing casings of Smith and Krallmann et al. with the method involving spray of Quinones et al. because it provides an economical and fast way to lubricate the casing and to promote high speed shirring (column 2 lines 5-11).

Response to Arguments

18. In response to Applicant's arguments regarding the fact that one of ordinary skill in the art would not of used the para-hydroxy-benzoic acid as the antimicrobial agent because these esters work as antimicrobial agents only when absorbed by the casings, Examiner points out that both the casings of Krallmann et al. and Smith are able to absorb water. Further it is pointed out that the antimicrobial agent of Krallmann is also absorbed into the casing with water (page 3a). As such one of ordinary skill in the art would be motivated to use these esters, which work in the same manner as the antimicrobial agents of Krallmann et al., as the antimicrobial agent in Krallmann et al. In regards to Applicants arguments regarding the fact that casing of Krallmann et al. would

not absorb enough of these esters to be an effective antimicrobial agent it is noted that "the arguments of counsel cannot take the place of evidence in the record", *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). It is the examiner's position that the arguments provided by the applicant regarding effectiveness of the esters in the casing of Krallmann et al. must be supported by a declaration or affidavit. As set forth in MPEP 716.02(g), "the reason for requiring evidence in a declaration or affidavit form is to obtain the assurances that any statements or representations made are correct, as provided by 35 U.S.C. 24 and 18 U.S.C. 1001".

19. In regards to Applicant's arguments that neither Krallmann et al. nor Smith would teach the inclusion of a viscosity increasing agent, Examiner points to the current rejections which show that both Krallmann et al. and Smith teach the inclusion of preferred viscosity increasing agents of the current invention.

20. In regards to applicant's argument that Smith, Krallmann et al, and Quinones do not teach spraying during the shirring process, Examiner points out that while Quinones is silent regarding antimicrobial agents being applied by spraying during a shirring process, Quinones does teach that it is well known in the art to moisten the casing during the shirring process as well as to include various additions to the aqueous solution which is sprayed onto the casing (column 7 line 54-67). It would be obvious to one of ordinary skill in the art at the time of the invention to include the antimicrobial additive in this sprayed aqueous composition because it would cut down on the number of steps, offering a time and economical benefit to the method. Further Examiner notes that while Quinones does not disclose all the features of the present claimed invention,

Quinones is used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikov
Examiner
Art Unit 1794

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794

